

No. 10290

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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JOHN WILLIAM WESTENRIDER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the District of Nevada.

FILED

JAN 9 - 1943



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Circuit Court of Appeals  
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# INDEX

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Arraignment and Plea.....	6
Assignment of Errors.....	31
Bill of Exceptions.....	34
Exhibits for Plaintiff:	
1—Copy of “Contract and/or Order” Signed by Elizabeth E. Lund....	38
2—Printed Form “FHA Title I Loan, Credit Statement-Applica- tion” with Printed Warning at the Bottom .....	41
3—Check No. 349, Dated June 17, 1942, Signed by Elizabeth Lund, Payable to E. L. Noble, in the Amount of \$167.00.....	42
4—Certificate of R. Winton Elliott, Assistant to the Commissioner, FHA, Dated Sept. 24, 1942.....	56
Order Settling and Allowing.....	60
Stipulation as to.....	59

Index	Page
Witnesses for Plaintiff:	
Buchanan, F. M.	
—direct .....	50
Elkins, David W.	
—direct .....	47
—cross .....	49
Lund, Mrs. Elizabeth E.	
—direct .....	35
—cross .....	43
—redirect .....	47
—recalled, direct .....	58
—cross .....	58
Noble, Edgar L.	
—direct .....	51
—cross .....	54
—redirect .....	55
—recross .....	55
Bond of Defendant.....	21
Certificate of Clerk to Transcript of Record on Appeal .....	62
Indictment .....	2
Judgment and Commitment.....	14

## Index

Page

## Minutes of Court:

Sept. 12, 1942—Arraignment and Plea .....	6
Sept. 19—Order Resetting Case for Trial .....	6
Sept. 29—Trial .....	7
Sept. 30—Further Trial .....	10
Oct. 1—Order Continuing Time for Sentence .....	12
Oct. 6—Sentence .....	12
Oct. 13—Order re Conference in re Preparation of Record on Appeal .....	18
Oct. 16—Order Resetting Time for Conference .....	18
Oct. 17—Conference in re Record on Appeal .....	19
Oct. 27—Further Hearing in re Rec- ord on Appeal.....	26
Nov. 14—Further Hearing and Or- der Associating M. B. Moore as Counsel for Defendant.	27
Nov. 19—Order Continuing Time for Further Hearing in re Rec- ord on Appeal.....	27

Index	Page
Minutes of Court (Continued):	
Nov. 19—Order Continuing Time for Filing Record on Appeal.	28
Nov. 20—Order Continuing Time for Further Hearing .....	28
Nov. 23—Further Hearing .....	29
Dec. 4—Further Hearing .....	29
Motion for Directed Verdict.....	7
Names and Addresses of Attorneys of Record	1
Notice of Appeal.....	16
Order Extending Time for Filing Record on Appeal .....	28
Order Releasing Defendant on Bond Pending Appeal .....	20
Orders re Conference re Transcript of Rec- ord .....	18, 19, 26, 27, 28, 29
Order re Original Exhibits.....	61
Order re Transcript of Record on Appeal....	61
Order Settling and Allowing Bill of Exceptions	60
Sentence, Minute Orders re.....	12
Stipulation as to Bill of Exceptions.....	59
Trial, Minute Orders re.....	6, 7, 10
Verdict of Jury.....	11

NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD

For the Appellant:

WM. L. HACKER, Esq.,  
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Reno, Nevada.

M. B. MOORE, Esq.,  
103 Mill Street,  
Reno, Nevada.

For the Appellee:

THOMAS O. CRAVEN, Esq.,  
United States Attorney,  
Post Office Building,  
Reno, Nevada.

BRUCE R. THOMPSON, Esq.,  
Assistant U. S. Attorney,  
Post Office Building,  
Reno, Nevada.

WM. J. KANE, Esq.,  
Assistant U. S. Attorney,  
Post Office Building,  
Reno, Nevada. [1\*]

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States of  
America, in and for the District of Nevada

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDGAR L. NOBLE and JOHN WILLIAM  
WESTENRIDER, alias JOHN LEVI,

Defendants.

INDICTMENT FOR VIOLATION SECS. 76 and  
88, T. 18, U. S. C. A.

United States of America,  
District of Nevada—ss.

Of the May 1942 Term of the District Court of  
the United States of America, in and for the Dis-  
trict of Nevada;

The Grand Jurors of the United States of Amer-  
ica, chosen, selected and sworn, within and for the  
District of Nevada, in the name and by the author-  
ity of the United States of America, upon their  
oaths do find and present:

That John William Westenrider, alias John  
Levi, whose other or true name is to these Grand  
Jurors unknown, did, on or about the 14th day of  
June 1942, at Carson City, in the State and District  
of Nevada, and within the jurisdiction of this court,  
unlawfully, wilfully, knowingly and feloniously,  
with the intent in him then and there to defraud one  
Elizabeth E. Lund, falsely assume and pretend to

be an officer or employee acting under the authority of the United States, to-wit: a government investigator and inspector investigating [2] alleged violations of the Federal Housing Administration laws and regulations, and at said time and place and in such pretended character, said John William Westenrider, alias John Levi, did attain from said Elizabeth E. Lund a paper or document, to-wit: a check drawn by said Elizabeth E. Lund to the order of Edgar L. Noble for the sum of \$167.00.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further find and present:

### Count II

That John William Westenrider, alias John Levi, and Edgar L. Noble, whose other or true names are to these Grand Jurors unknown, did, on or about the 14th day of June, 1942, at Carson City, in the State and District of Nevada, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously, combine, conspire and confederate with each other to commit an offense against the United States in this: that it was a part of said unlawful and felonious combination, conspiracy and confederacy, that said defendant John William Westenrider, alias John Levi, with the intent in him and in said Edgar L. Noble, then and there to defraud one Elizabeth E. Lund of the sum

of \$167.00, lawful money of the United States, should falsely assume and pretend that he, the said John William Westenrider, alias John Levi, was an officer and employee acting under the authority of the United States, to-wit: a Government investigator and inspector investigating alleged violations of the Federal Housing Administration laws and regulations, and that he, the said John William Westenrider, alias John Levi, [3] should take it upon himself to act as such officer and employee, and in such pretended character should demand and obtain from said Elizabeth E. Lund said sum of money.

That pursuant to said unlawful confederacy, combination and conspiracy, and for the purpose of carrying out the objects thereof, said defendants committed the following overt acts:

1. That on or about the 14th day of June, 1942, at Carson City, Ormsby County, State and District of Nevada, John William Westenrider, alias John Levi, and Edgar L. Noble, accompanied one another in an automobile to 204 South Division Street, Carson City, Nevada.

2. That on or about the 14th day of June, 1942, at Carson City, Ormsby County, State and District of Nevada, the defendant John William Westenrider, alias John Levi, falsely assumed and pretended to be an officer and employee acting under the authority of the United States, to-wit: a Government investigator and inspector investigating alleged violations of the Federal Housing Administration laws and regulations.

3. That on or about the 15th day of June, 1942, at Carson City, Ormsby County, State and District of Nevada, John William Westenrider, alias John Levi, demanded that Elizabeth E. Lund, deliver to Edgar L. Noble a check drawn by said Elizabeth E. Lund to the order of Edgar L. Noble in the sum of \$167.00.

4. That on or about the 15th day of June, 1942, at Reno, Washoe County, State and District of Nevada, John William Westenrider, alias John Levi, and Edgar L. Noble, transferred and delivered said check drawn by said Elizabeth E. Lund to the order of Edgar L. Noble in the sum of \$167.00, [4] to one F. W. Buchanan and received money and credits from said F. W. Buchanan in return therefor.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

THOMAS O. CRAVEN,  
United States Attorney.

By BRUCE R. THOMPSON,  
Ass't. U. S. Attorney.

A True Bill:

C. A. BROWN,  
Foreman.

[Endorsed]: Filed Sept. 2, 1942. [5]

In the District Court of the United States in and  
for the District of Nevada

Minutes of Court, Saturday, September 12, 1942

No. 10,556

[Title of Cause.]

The defendant John William Westenrider appears this day in open court and states his attorney, I. A. Lougaris, is not present and waives services of an attorney for arraignment. Thereupon the said defendant is duly arraigned upon the indictment herein as required by law. He declares his true name to be John William Westenrider and enters a plea of not guilty. It Is Ordered that this case be, and it hereby is, set for trial for September 24, 1942, at Carson City, Nevada, subject to the further order of the Court. The defendant is released on bond heretofore filed herein. \* \* \* [6]

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In the District Court of the United States in and  
for the District of Nevada

Minutes of Court, September 19, 1942

No. 10556

[Title of Cause.]

Upon motion of the U. S. Attorney, It Is Ordered that the setting of September 24, 1942, for the trial of this case be, and the same hereby is, vacated and the case is reset for trial September 29, 1942, at ten o'clock A. M., at Carson City, Nevada. [7]

[Title of District Court and Cause.]

MOTION FOR DIRECTED VERDICT

And Now Comes the defendant, John William Westenrider, and moves that the Court will order a verdict of "Not Guilty" as to him on the crime alleged in the indictment, upon the ground that there is not sufficient evidence to warrant his conviction, and on the ground that the Government has failed to prove facts sufficient to constitute a prima facie case, or the crime alleged in the indictment or any crime at all; and on the ground that the Government has failed to prove any criminal intent on the part of the defendant; and on the ground that the evidence adduced on behalf of the Government is as consistent with innocence as with guilt and is insufficient to sustain a conviction.

/s/ WM. L. HACKER,

Attorney for Defendant.

[Endorsed]: Filed Sept. 29, 1942. [8]

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In the District Court of the United States in and  
for the District of Nevada

Minutes of Court, Tuesday, September 29, 1942

No. 10,556

[Title of Cause.]

This being the time heretofore fixed for the trial of John William Westenrider and the same coming on regularly this day, Bruce R. Thompson, Esq., Assistant U. S. Attorney, appearing for and on be-

half of the plaintiff; and Wm. L. Hacker, Esq., for the defendant,—the defendant also being present. Both parties ready. Mr. Hacker asks that this case be reported at the expense of the defendant. It Is So Ordered. The following named jurors are accepted by the parties and duly sworn to try the issue, viz: Edward M. Johnson, Perry W. Hayden, Francis M. Young, J. A. Burt, James K. Hickey, Melio Maionchi, Fred W. Steiner, Jr., John H. Wichman, Geo. W. Friedhoff, James M. Byrne, Leland K. Bright and Melvin J. Fodrin. At 11:15 A. M. the jury panel is exhausted. It is Ordered that the Marshal summon five additional talesmen to appear at 1:30 o'clock P. M. today. It Is Further Ordered that the Marshal notify August A. Glanzman, a juror excused to call, to appear at 1:30 P. M. today. Mrs. Marie D. McIntyre, Official reporter, is called to report this case at the expense of the defendant. Recess is declared to 1:30 o'clock P. M. At 1:30 o'clock P. M. all present, including 5 talesmen, viz: W. H. Orton, George B. Russell, Melvin J. Fodrin, Ray Workman and A. B. Deady. Leland L. Bright and August A. Glanzman, jurors on the regular panel, also answer to their names. [9] The names of Leland K. Bright and August A. Glanzman are placed in the jury box and the Clerk proceeds to draw additional names of prospective jurors. The five talesmen names are now placed in the jury box and the clerk proceeds to draw additional names of prospective jurors. The indictment is read to the jury by the Clerk and the plea of the defendant stated. Mr. Thompson

makes opening statement. Elizabeth E. Lund is duly sworn and testifies for and on behalf of the plaintiff, during which a book containing a copy of a "Contract and/or Order" signed by Elizabeth E. Lund is marked Plff's. Ex. No. 1 for Identification. Mr. Thompson offers in evidence the copy of contract marked Plff's. Ex. No. 1 for Identification, which is admitted and ordered marked Plff's. Ex. No. 1. At the request of Mr. Thompson an F. H. A. Title 1 Loan Document with a printed warning thereon is marked Plff's Ex. No. 2 for Identification, offered in evidence, which is admitted, and ordered marked Plff's. Ex. No. 2. Mr. Thompson offers in evidence check No. 349 drawn by Elizabeth Lund to E. L. Noble in sum of \$167.00, which is admitted and ordered marked Plff's. Ex. No. 3. David W. Elkins and F. M. Buchanan are each duly sworn and testify for and on behalf of the plaintiff. Edgar L. Noble is duly sworn and testifies for the plaintiff. Mr. Thompson offers in evidence certificate of R. Winton Elliott, Assistant to the Commissioner, Federal Housing Administration, to the effect that John William Westenrider was not an employee of F. H. A., which is admitted and ordered marked Plff's Ex. No. 4. Elizabeth Lund is recalled to the witness stand for further direct-examination. The plaintiff rests. The jury is admonished by the Court and excused to ten o'clock A. M. tomorrow. Mr. Hacker now files a motion for a directed verdict and submits the same without argument. It Is Ordered that the motion be, and the same hereby is,

denied. [10] The defendant is granted an exception. Court adjourns until ten o'clock A. M. tomorrow.

[11]

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In the District Court of the United States in and  
for the District of Nevada

Minutes of Court, Wednesday, September 30, 1942

No. 10,556

[Title of Cause.]

The further trial of this case coming on regularly this day, the same counsel, defendant and jury being present. The official reporter is also present. Mr. Hacker waives opening statement. The defendant, John William Westenrider, is duly sworn and testifies in his own behalf. The defendant rests. At 10:35 o'clock A. M. the jury is admonished by the Court and excused for 15 minutes. Mr. Hacker now renews his motion for a directed verdict. The motion is denied and defendant granted an exception. The jury is recalled to the court room. Following arguments by counsel for the respective parties, the case is submitted. After hearing the instructions given by the Court, the jury, at 12:25 o'clock P. M., retires in charge of the Marshal to deliberate on the case. The Marshal is authorized to take the jury to luncheon. At 2:05 o'clock P. M. the jury returns into Court with the following verdict, to-wit: "In the District Court of the United States for the District of Nevada. The United States vs. Edgar L. Noble and John Wil-

liam Westenrider, alias John Levi, true name John William Westenrider. No. 10556. We, the jury in the above-entitled case, find the defendant, John William Westenrider, is guilty as charged in the first count of the indictment; and is guilty as charged in the second count. [12]

Dated this 30 day of September, 1942. Melvin J. Fodrin, Foreman.”,—and so they all say. The jury is thanked by the Court and excused for the Term. Upon motion of Mr. Thompson, It Is Ordered that this defendant be, and he hereby is, remanded to the custody of the Marshal. It Is Further Ordered that the matter of imposition of sentence be, and the same hereby is, continued to October 1, 1942, at ten o'clock A. M. at Reno, Nevada, subject to the further order of the Court. \* \* \* [13]

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[Title of District Court and Cause.]

### VERDICT OF JURY

We, the Jury in the above-entitled case, find the defendant, John William Westenrider, is guilty as charged in the first count of the indictment; and is guilty as charged in the second count.

Dated this 30 day of September, 1942.

MELVIN J. FODRIN

Foreman.

[Endorsed]: Filed Sept. 30, 1942. [14]

In the District Court of the United States  
in and for the District of Nevada

Minutes of Court, Thursday, October 1, 1942

No. 10,556

[Title of Cause.]

The defendant John William Westenrider appears this day in the custody of the Marshal, this being the time heretofore fixed for passing sentence. W. L. Hacker, Esq., attorney for defendant, is also present. The defendant consenting thereto, It Is Ordered that the time for imposition of sentence be, and the same hereby is, continued to October 6, 1942, at ten o'clock A. M., at Reno, Nevada, subject to the further order of this Court. The defendant is remanded to the custody of the Marshal. \* \* \* [15]

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In the District Court of the United States  
in and for the District of Nevada

Minutes of Court, Tuesday, October 6, 1942

No. 10,556

[Title of Cause.]

These defendants appear this day in the custody of the Marshal, this being the time heretofore fixed for passing sentence in this case. W. L. Hacker, Esq., attorney for defendant, John William Westenrider, is present in Court. State-

ment of case made by U. S. Attorney and probation officer. Thereupon the Court pronounces judgment as follows: "It Is by the Court Ordered and Adjudged that the defendant, John William West-  
enrider, having been found guilty of the offenses charged in the indictment herein, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Eighteen (18) Months on Count 1; and One (1) Year and One (1) Day on Count 2—said sentences to run concurrently, one with the other. It Is Further Ordered that the Clerk deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein." The defendant is remanded to the custody of the Marshal. \* \* \* [16]

District Court of the United States  
in and for the District of Nevada

No. 10556—Criminal Indictment in Two Counts for  
Violation of U. S. C., Title 18, Secs. 76 and 88

UNITED STATES

vs.

JOHN WILLIAM WESTENRIDER, alias  
JOHN LEVI, true name JOHN WILLIAM  
WESTENRIDER, et al.

#### JUDGMENT AND COMMITMENT

On this 6th day of October, 1942, came the United States Attorney, and the defendant John William Westenrider, appearing in proper person, and by counsel, and,

The defendant having been convicted on a verdict of guilty of the offenses charged in the Indictment in the above-entitled cause, to wit: did unlawfully, wilfully, knowingly and feloniously, with intent to defraud one Elizabeth E. Lund, falsely assume and pretend to be an officer or employee of the United States, to-wit: a Government investigator and inspector investigating alleged violations of the F. H. A. laws and regulations, and in such pretended character did obtain a check from said Elizabeth E. Lund, drawn to the Order of Edgar L. Noble in the sum of \$167.00; Count 2: unlawful conspiracy to defraud said victim—said

crimes having been committed on or about the 14th day of June, 1942, at Carson City, Ormsby County, State and District of Nevada, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of Eighteen (18) Months on Count 1; and One (1) Year and One (1) Day on Count 2—said sentences to run concurrently, one with the other.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) FRANK H. NORCROSS

United States District Judge.

The Court recommends commitment to a Penitentiary.

A True Copy. Certified this 6th day of October, 1942.

(Signed) O. E. BENHAM

Clerk.

(By) M. R. GRUBIC

Deputy Clerk. [17]

In the District Court of the United States of  
America, in and for the District of Nevada

No. 10,556

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDGAR L. NOBLE, and JOHN WILLIAM  
WESTENRIDER, alias JOHN LEVI,

Defendants.

### NOTICE OF APPEAL

John William Westenrider, Reno, Nevada, Appel-  
lant.

William L. Hacker, Reno, Nevada, Attorney for  
Appellant.

Offense:

Count I. Falsely assuming and pretending to  
be an officer of the United States and defrauding  
one Elizabeth E. Lund.

Count II. Conspiring with one Edgar L. Noble  
to commit the offense above mentioned.

Date of Judgement: October 6th, 1942.

Defendant confined in the Washoe County Jail,  
Reno, Washoe County, Nevada.

I, the above named appellant, hereby appeal to  
the United States Circuit Court of Appeals for the  
Ninth Circuit from the Judgement above mentioned  
on the grounds set forth below.

Pursuant to Rule V, I hereby serve notice that I do not elect to enter upon the service of the sentence pending [18] appeal.

/s/ JOHN WILLIAM WESTENRIDER  
Appellant.

Dated October 8th, 1942.

Grounds of appeal:

1. There was not sufficient evidence to submit to the jury as to any intent on the part of the defendant to commit the offense alleged in Count I of the Indictment, and/or as to any conspiracy on the part of the defendant to commit the offense above specified, and the Court should have dismissed the cause at the close of the Government's case or directed a verdict at the close of the entire case.

2. The Government failed to prove any criminal intent on the part of the defendant.

3. The evidence adduced at the trial is as consistent with innocence as with guilt and is insufficient to sustain a conviction of the offenses alleged in the indictment or any crime at all.

[Endorsed]: Filed Oct. 9, 1942. [19]

In the District Court of the United States  
in and for the District of Nevada

Minutes of Court, October 13, 1942  
No. 10556

[Title of Cause.]

Pursuant to Chapter 7 of Criminal Appeals Rules as promulgated by the Supreme Court of the United States, It Is Ordered that October 16, 1942, at eleven o'clock A. M., at Reno, Nevada, be fixed as the time and place for conference by counsel for the respective parties and the Court with respect to the preparation of record on appeal of defendant John William Westenrider herein. [20]

---

In the District Court of the United States  
in and for the District of Nevada

Minutes of Court, October 16, 1942  
No. 10556

[Title of Cause.]

Pursuant to the request of Wm. L. Hacker, Esq., attorney for defendant John William Westenrider herein, It Is Ordered that the time for conference with respect to preparation of record on appeal, now set for this day, be, and the same hereby is, continued over to October 17, 1942, at 10:30 o'clock A. M., at Reno, Nevada. [21]

In the District Court of the United States  
in and for the District of Nevada

Minutes of Court, October 17, 1942

No. 10556

[Title of Cause.]

At this time appears Bruce R. Thompson, Esq., Assistant U. S. Attorney; W. L. Hacker, Esq., attorney for the defendant Westenrider; and the defendant John William Westenrider, this being the time heretofore fixed for conference with respect to preparation of record on appeal. Mr. Hacker presents to the Court a form of order fixing the amount of bond of defendant pending the appeal. Thereupon the following order is made and entered, to-wit: "Order. (See formal order releasing defendant on \$4000.00 bond) \* \* \*" Mr. Hacker now presents a bond in the sum of \$4000.00 with National Automobile Insurance Company as surety thereon, which bond is approved by the Court and filed herein. It Is Ordered that the defendant be released from custody on said bond pending the determination of the appeal herein. Upon motion of Mr. Thompson, It Is Ordered that the Court Reporter make and file a certified transcript of testimony upon the trial of this case, the original to be filed with the Clerk and a certified copy thereof served upon counsel for the plaintiff and for defendant and appellant, and that the defendant and appellant pay the reporter for the cost of said transcripts. The Court now gives cer-

tain directions concerning the preparation of the record on appeal. It Is Ordered that the further hearing in this matter be, and the same hereby is, continued to October 27, 1942, at ten o'clock A. M., at Reno, Nevada. [22]

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[Title of District Court and Cause.]

ORDER RELEASING DEFENDANT ON BOND  
PENDING APPEAL

John William Westenrider, having duly filed and served a notice of appeal electing not to enter upon the service of his sentence pending appeal from the judgment of conviction rendered herein and from the sentence imposed herein on the 6th day of October, 1942, it is

Ordered that the defendant, John William Westenrider, be set at liberty upon furnishing a bond in the sum enumerated as follows:

Four Thousand Dollars (\$4000.00) during dependence of said appeal in the Ninth Circuit Court of Appeals and until the Mandate of the said Circuit Court shall be issued and filed on said appeal and an order entered thereon.

Dated this 17th day of October, 1942.

FRANK H. NORCROSS

United States District Judge.

[Endorsed]: Filed Oct. 17, 1942. [23]

United States of America,  
District of Nevada—ss.

APPEAL BOND NO. 30124

Know All Men by These Presents,

That we John William Westenrider, as principal, and National Automobile Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of California, as Surety, are held and firmly bound unto the United States of America, in the sum of Four Thousand Dollars (\$4,000.00), to be paid to the said United States of America, certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated the 17th day of October, in the year of our Lord, One Thousand Nine Hundred and Forty-two.

The Condition of the above recognizance is such, that, whereas, lately at a District Court of the United States for the District of Nevada in a suit depending in said Court, between United States of America vs. John William Westenrider a judgment was rendered against the said John William Westenrider and the said John William Westenrider having filed in the Clerk's Office of said Court Notice of Appeal in duplicate, from said judgment in the aforesaid suit, and said appeal is now regularly pending in the United States Court of Ap-

peals in and for the Ninth Circuit to be holden at the City of San Francisco in the State of California and Northern District of California,

Now, Therefore, if the said John William Westenrider surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed, or that, in [24] case the judgment be reversed and the cause be remanded for a new trial he appear in the Court to which said cause may be remanded for a new trial and render himself amenable to any and all lawful orders and process in the premises, then this recognizance shall be void, otherwise to remain in full effect and virtue. This recognizance shall be deemed and construed to contain the "express agreement" for summary judgment, and execution thereon, mentioned in Rule 34 of the District Court.

Acknowledged before me and approved the day and year first above written.

FRANK H. NORCROSS

United States District Judge  
for the District of Nevada.

[Seal]

JOHN WILLIAM WESTEN-  
RIDER

Address

Nevada City, Nevada

NATIONAL AUTOMOBILE  
INSURANCE COMPANY

By HARRY D. ADAMS

Attorney-in-Fact

States of California,  
City and County of San Francisco—ss.

On this 13th day of October, in the year 1942 before me, George Gillen, a Notary Public in and for said County and State, personally appeared Harry D. Adams known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of the National Automobile Insurance Company, and acknowledged to me that he subscribed the name of the National Automobile Insurance Company thereto as principal, and his own name as Attorney-in-fact.

[Seal]

GEORGE GILLEN

Notary Public in and for said  
County and State.

My Commission Expires January 1, 1943. [25]

This Power of attorney is hereby made a part of and attached to Bond No. 30124, John William Westenrider.

(Certified Copy)

### POWER OF ATTORNEY

National Automobile Insurance Company

Know All Men by These Presents:

That the National Automobile Insurance Company, a corporation organized and existing under the laws of the State of California, and having its principal office in the City of Los Angeles, California, does hereby constitute and appoint Harry D. Adams of the City of San Francisco, State of

California, its true and lawful Attorney-in-Fact, to execute, seal and deliver for *an* on its behalf as Surety, Any and All Bonds and Undertakings, Recognizances, Contracts of Indemnity and Other Writings of Obligatory in the Nature Thereof, Which Are or May Be Allowed, Required, or Permitted by Law, Statute, Rule, Regulation, Contract or Otherwise, and the execution of such instruments in pursuance of these presents shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the duly elected officers of the Company at its Principal Office.

In Testimony Whereof, the National Automobile Insurance Company has caused this instrument to be signed and its corporate seal to be affixed by its officers this 31st day of December, 1941.

[Seal]

NATIONAL AUTOMOBILE  
INSURANCE COMPANY

By JOHN Q. McCLURE,  
President

By O. W. MOORE,  
Secretary [26]

State of California,  
County of Los Angeles—ss.

On this 31st day of December, 1941, before me Helengene Duffin a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared John Q.

McClure and O. W. Moore to say that they are respectively the President and Secretary of the National Automobile Insurance Company, a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that the said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said John Q. McClure and O. W. Moore acknowledge said instrument to be the voluntary act and deed of said corporation.

In Witness Whereof, I have hereto set my hand and affixed my official seal the day and year first above written.

[Seal]

HELENGENE DUFFIN

Notary Public in and for said  
County and State.

My Commission Expires December 2, 1945.

ENDORSED

The foregoing is a true and correct copy of Power-of-Attorney granted to Harry D. Adams on the 31st day of December, 1941, authorizing him to execute Surety and/or Fidelity Bonds on behalf

of the National Automobile Insurance Company and has not been revoked.

Signed this 13th day of October, 1942.

[Seal]                    NATIONAL AUTOMOBILE  
  INSURANCE COMPANY  
By O. W. MOORE  
  Secretary

[Endorsed]: Filed Oct. 17, 1942. [27]

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In the District Court of the United States  
in and for the District of Nevada

Minutes of Court, October 27, 1942

No. 10556

[Title of Cause.]

This being the time heretofore fixed for further hearing on settlement of record on appeal, and the same coming on regularly this day, Bruce R. Thompson, Esq., appearing for and on behalf of the plaintiff; and W. L. Hacker, Esq., for the defendant John William Westenrider, Mr. Hacker asks for an extension of time in which to file appellant's bill of exceptions and assignment of errors. It Is Ordered that all matters herein, including the settlement of the record on appeal be, and the same hereby are, continued to November 14, 1942 at ten o'clock A. M., at Reno, Nevada. [28]

In the District Court of the United States  
in and for the District of Nevada

Minutes of Court, November 14, 1942

No. 10556

[Title of Cause.]

This being the time heretofore fixed for settlement of record on appeal herein, and the same coming on regularly this day, Bruce R. Thompson, Esq., Assistant U. S. Attorney, appearing for and on behalf of plaintiff; and Messrs. W. L. Hacker and M. B. Moore for the defendant John William Westenrider. Upon motion of Mr. Hacker, It Is Ordered that M. B. Moore, Esq., be associated as counsel for the defendant for the purpose of this appeal. Mr. Hacker now files assignment of errors. Counsel for the respective parties make brief statements concerning the record on appeal. It Is Ordered this matter is continued to November 19, 1942, at ten o'clock A. M., at Reno, Nevada for further consideration on the matter of appeal. [29]

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In the District Court of the United States  
in and for the District of Nevada

Minutes of Court, Thursday, November 19, 1942

No. 10556

[Title of Cause.]

This being the time heretofore fixed for settling of record on appeal of defendant John William Westenrider and the same coming on regularly

this day, Bruce R. Thompson, Esq., Assistant U. S. Attorney, appearing for and on behalf of the plaintiff; and W. L. Hacker, Esq., for the defendant. Upon motion of Mr. Hacker, It Is Ordered that the time for settlement of record on appeal be, and the same hereby is continued to November 20, 1942, at ten o'clock A. M., at Reno, Nevada. Upon motion of Mr. Hacker, It Is Ordered that the time for filing record on appeal in the U. S. Circuit Court of Appeals for the Ninth Circuit be, and the same hereby is, extended to and including December 11, 1942. [30]

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In the District Court of the United States in and  
for the District of Nevada

Minutes of Court, Friday, November 20, 1942

No. 10556

[Title of Cause.]

Upon motion of the U. S. Attorney, It Is Ordered that the time for settlement of record on appeal herein be, and the same hereby is, continued to November 23, 1942, at ten o'clock A. M., at Reno, Nevada. [31]

In the District Court of the United States in and  
for the District of Nevada

Minutes of Court, Monday, November 23, 1942

No. 10556

[Title of Cause.]

This being the time heretofore fixed for settlement of record on appeal and the same coming on regularly this day, Bruce R. Thompson, Esq., Assistant U. S. Attorney, appearing for and on behalf of the plaintiff, and Messrs. Wm. L. Hacker and M. B. Moore appearing for the defendant John William Westenrider. Mr. Hacker presents proposed bill of exceptions and Mr. Moore makes statement concerning same. On stipulation of counsel for the respective parties, It Is Ordered that the time for hearing and settlement of proposed bill of exceptions and proposed amendments thereto be continued until December 4, 1942, at ten o'clock A. M. at Reno, Nevada. [32]

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In the District Court of the United States in and  
for the District of Nevada

Minutes of Court, Friday, December 4, 1942

No. 10556

[Title of Cause.]

This being the time heretofore fixed for settlement of record on appeal of John William Westenrider, and the same coming on regularly this day,

Bruce R. Thompson, Esq., Assistant U. S. Attorney, appearing for and on behalf of the plaintiff, and Wm. L. Hacker, Esq., for the defendant John William Westenrider. Counsel for the respective parties sign the stipulation attached to the bill of exceptions and thereupon the following order, at the end of Bill of Exceptions, is signed by the Court, to-wit: "Order This is to certify that the foregoing Bill of Exceptions rendered by the Defendant-Appellant is correct in substance, that with the exhibits, all of which are to be submitted to the Circuit Court of Appeals on the argument by appropriate stipulation and order, it contains all the evidence in this cause, and the said exhibits are hereby made a part of this Bill of Exceptions, and it is hereby settled, allowed, and made a part of the record in this cause."

Upon motion of Mr. Hacker, the further order is entered, to-wit: "Order. On the consent of the attorneys for the respective parties, it is hereby Ordered that the Clerk of this Court prepare and certify a Transcript of the Record in the above entitled case for the use of the Ninth Circuit Court of Appeals of the United States by including therein the following: 1. Indictment. 2. Notice of Appeal. [33] 3. Assignment of Errors. 4. Bill of Exceptions. 5. Motion for Directed Verdict. 6. Originals of Plaintiff's Exhibits 1, 2, 3, and 4. 7. The Verdict of the Jury. 8. The Judgement of the Court". [34]

[Title of District Court and Cause.]

### ASSIGNMENT OF ERRORS

Now Comes the defendant, John William West-  
enrider, by his attorney, and says that in the pro-  
ceeding herein and in the orders and judgments  
entered there are manifest errors, to-wit:

#### Assignment of Error No. I.

The Court erred in denying the Motion made on behalf of the defendant at the end of the Govern-  
ment's case for a direction of a verdict of "Not  
Guilty" on each and every count of the indictment  
upon the grounds that there was not sufficient evi-  
dence to warrant his conviction; that the Govern-  
ment had failed to prove facts sufficient to consti-  
tute a prima facie case, or the crime alleged in the  
indictment or any crime at all; that the Government  
had failed to prove any criminal intent on the part  
of the defendant; and that the evidence adduced  
on behalf of the Government was as consistent with  
innocence as with guilt, and was insufficient to sus-  
tain a conviction.

(See Transcript of Testimony, Page 54.) [35]

#### Assignment of Error No. II.

The Court erred in denying the motion made on behalf of the defendant at the end of the whole case for a direction of a verdict of "Not Guilty" on each and every count of the indictment upon the grounds that there was not sufficient evidence to warrant his conviction; that the Government had failed to prove facts sufficient to constitute a prima facie

case, or the crime alleged in the indictment or any crime at all; that the Government had failed to prove any criminal intent on the part of the defendant; and that the evidence adduced on behalf of the Government was as consistent with innocence as with guilt, and was insufficient to sustain a conviction.

(See Transcript of Testimony, Pages 70, 71, and 72.)

### Assignment of Error No. III.

The Court erred over objection and exception of defendant's counsel in permitting on the direct-examination of David W. Elkin, the following question:

“Q. What was he doing there, if you know?”

Mr. Hacker: Just a moment. I object to that line of questioning, upon the grounds it is incompetent, irrelevant, and immaterial, has no connection whatsoever with the issues in this case, doesn't prove or tend to prove any issue in this case. The issue here is that this defendant represented himself to be a Government officer in June, 1942. Now what he was doing in Virginia City for a year prior to that, I fail to see where it is relevant in any respect whatever.

Mr. Thompson: I suggest, your Honor——

Mr. Hacker: Now in that connection, if I may call the Court's attention to this fact—I don't know [36] what the purpose of this examination is, whether to show he is a man of good character or a man of bad character, but if that is his pur-

pose, it is wholly irrelevant because his character is not in issue until he puts it in issue. The Government will not be permitted to go into this man's prior life other than to ask if he has ever been convicted of a felony, and I would at least ask that the United States Attorney be required to state the object of this examination, his purpose.

Mr. Thompson: Well, if the Court please, I suggest that the evidence is very material on the question of whether or not this defendant, when he represented himself to be a Government officer, was making a false representation, whether that was an assumed character and what he was doing just immediately prior to June 14, 1942 is very relevant on that issue.

The Court: I will permit the question, subject to conditions later. If it isn't connected, it may be stricken.

Mr. Hacker: I would like to make the further objection, if the Court please, upon the ground it is not the best evidence. If he wants to prove he is not a Government officer, the records of the government will prove that.

The Court: That objection will be overruled for the present.

Mr. Hacker: I desire an exception on the grounds stated in the objection.

The Court: Exception may be noted.

(See Transcript of Testimony, Pages 25 and 26.) [37]

And by reason of said errors and other manifest errors appearing in the record herein, the defendant prays that the judgment of conviction be set aside and that he be discharged from custody.

Dated November 14, 1942.

WM. L. HACKER,  
Attorney for Defendant.  
W. B. MOORE,  
Assistant.

[Endorsed]: Filed Nov. 14, 1942. [38]

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[Title of District Court and Cause.]

## BILL OF EXCEPTIONS

### Trial

Be It Remembered, that the above entitled case came on regularly for trial before the Court and a jury at Carson City, Nevada, on Tuesday, the 29th day of September, 1942, at 10:00 o'clock A. M., Hon. Frank H. Norcross, Judge, presiding.

#### Appearances:

Bruce Thompson, Esq., Asst. U. S. District Attorney, Attorney for Plaintiff.

William L. Hacker, Esq., Attorney for Defendant John Westenrider.

The following proceedings were had:

Opening statement made by attorney for plaintiff.

The Court: Does the defendant desire to make any statement at this time?

Mr. Hacker: Not at this time, your Honor. We will reserve it until later.

The Court: You may proceed with the witnesses.

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MRS. ELIZABETH E. LUND,

a witness on behalf of the plaintiff, being first duly sworn, testified in substance as follows:

Direct Examination [40]

My name is Elizabeth E. Lund. I live at 902 S. Virginia Street, Reno, Nevada. I own an apartment house at 204 S. Division and a six room dwelling at 202 S. Division, Carson City, Nevada. I own an apartment house at 204 S. Division St., Carson City, and on June 14th of this year I was residing there. I know John William Westenrider. I did not know him at that time. He is in the Court room right over there with the gray coat on. I saw him in Carson City on June 14th of this year at 2:00 o'clock Sunday morning. I was asleep. My doorbell rang and I asked who it was. Westenrider said it was two men traveling through and they wanted a room for the night. I took him upstairs, showed Mr. Westenrider three apartments and told him I had some cabins in the rear. We went downstairs and walked on the sidewalk around to the cabins. I looked over to the car, the automobile they were driving, it was parked right in front of the apartment house at 204 S. Division Street. I looked over,

(Testimony of Elizabeth E. Lund.)

saw Mr. Noble and said Mr. Noble is that you? He said yes, and Mr. Noble said take these handcuffs off me. They are hurting me. Mr. Westenrider didn't pay any attention to him, and Mr. Noble said again, take these handcuffs off me, they are hurting me. I said to Mr. Westenrider, what has he done that he has handcuffs on, and he said I just picked him up in Virginia City, he was drunk. I said is he drunk now, and he answered no, just scared to death. Mr. Westenrider, said he, Westenrider, was a government investigator and was investigating these loans where the public had been overcharged for work that was done and he said this work on your house shouldn't have been over \$500.00, any contractor would have done that work for \$500.00. I said why don't you see Mr. Hesse? He said I tried to get him before I got Mr. Noble but he skipped the country. Mr. [41] Hesse was partner with Mr. Noble in the contract work, putting imitation brick on the outside of the building, reframing windows and putting in window glasses which were broken. Mr. Westenrider said what did you and Mr. Hesse and Mr. Noble do with that \$250.00, you got above the loan? I couldn't remember any \$250.00. I knew I hadn't received any \$250.00, I didn't know what he meant by that. I said, "Well, I don't know of any harm that has been done." Well, he said, "Don't you know that is stealing from the government? Your ignorance won't save you. Do you want to straighten this

(Testimony of Elizabeth E. Lund.)

out or stand trial with Mr. Noble? It is too bad for an old gray haired lady like you to have to stand trial. You had better go back to bed now and I will see you tomorrow at 12:00 o'clock." I had never seen Mr. Westenrider before, I knew Mr. Noble for some time. He done three contracts for me in Reno, he and Mr. Hesse. I recognized Mr. Noble, he was sitting in the car. At that time I also told Mr. Westenrider the money I had obtained had been used for improvements, work around there, painting and so forth. The contract work on my house done by Mr. Noble and Mr. Hesse started October 31st, they took several weeks to finish. A contractor who lives in Carson City done part of the work, the painting. He made a contract with me to do it. Mr. Hesse and Mr. Noble put the brick on the house, they hired it done. They started about the 30th of October, 1941. (At this point Mr. Thompson had an instrument marked for identification, as plaintiff's Exhibit No. 1. Witness' attention was called to an item of \$833.00.) This paper (plaintiff's Exhibit No. 1 for identification) is a copy of the contract they were going to use. They cancelled it afterwards. That is my signature at the bottom of the contract. That is the first agreement for repair of house at 204 S. Division Street in Carson [42] City, but they changed it.

I saw Mr. Noble and Mr. Westenrider again about noon, Sunday, June 14th. They came to my home at 204 S. Division Street, Carson City. When

(Testimony of Elizabeth E. Lund.)

they got to the house Mr. Noble said I'd like to speak to you privately. I said come over to the corner of the house. He said no, I don't want Mr. Westenrider to hear what I have to say to you. Well, I said, go upstairs to the apartment. We went upstairs, Mr. Westenrider watched us. I went upstairs with Mr. Noble to the apartment. We had a conversation, Mr. Noble said I am awfully sorry, I tried to get you out of this trouble, I even tried to sell the keg of nails. He said I even tried to sell my clothes to get some money. He said you are a highly respected woman, I hate to see you get in this trouble. We then went downstairs, Mr. Westenrider was in the front room. Westenrider showed me these papers out of his brief case and asked if I hadn't read this notice on there where it said "Warning." He also had this contract. He said he was leaving town on the 15th. (The contract, plaintiff's Exhibit No. 1 for identification, was offered in evidence without objection and received in evidence as plaintiff's Exhibit No. 1.)

## PLAINTIFF'S EXHIBIT No. 1

### CONTRACT AND/OR ORDER

Reno, Nevada—Date Oct. 30 1941.

Order No.....

To Nevada Roofing & Remodeling Co., Licensed and Insured Bldg. Contractors, 307 Pine St., Reno, Nev.

(Testimony of Elizabeth E. Lund.)

This is your authority to perform the following roofing or remodeling: (Job Address) 204 So. Division.

For (Print Name)—Elizabeth Lund. City—Carson City. State—Nevada.

Type of shingles of roofing to be applied—Blank. Color—Blank.

Apply to hips and ridges—Blank. Color—Apply to Valleys—Blank. (of single, double thickness, Color—Blank.

Details of ~~Roofing~~ or Remodeling—Cover house complete with Briktex Color Red insulation also replace all window & door frames & sills also replace broken windows, put new sill under house also level up same for the sum of one thousand dollars (\$1000.00) we will return one hundred & sixty seven dollars (\$167.00) as soon as job is completed so do no painting or electric work.

Recorded owner of property—Blank.

Address—Blank.

Terms: Full contract price—\$833.00

Cash Payment—\$.....

Balance due on note \$.....

To be paid—F. H. A. 36 months.

Payable \$31.94 per month, beginning (Date)  
Jan. 2nd 1942.

(Testimony of Elizabeth E. Lund.)

This company agrees to do Only what is written on the face of this order; verbal promises not to modify this agreement.

This agreement is subject to approval of Sales Manager of this company and property owner's credit.

Above read, understood and agreed to, as written.

Not responsible for any consequential damage.

Signed: ELIZABETH E. LUND

(Owner or Agent)

Address.....

(Mailing Address)

Salesman—(Illegible).

[Endorsed]: Filed Sept. 29, 1942.

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Mr. Westenrider had this contract in his brief case on Sunday noon, June 14th. He read it to me. He said this \$167.00, had to be paid that day as he was leaving town the next day and he wouldn't be around there. He read the warning notice.

(The notice warning was marked for identification as plaintiff's Exhibit No. 2.) (This notice was offered in evidence and admitted without objection.)

This warning was read to me at noon Sunday, June 14th, the whole thing was read to me by Mr. Westenrider.

(Testimony of Elizabeth E. Lund.)

(Plaintiff's Exhibit No. 2 [43] received in evidence without objection and Mr. Thompson read Exhibit 2 to the jury. This Exhibit is certified up with the record.)

## PLAINTIFF'S EXHIBIT No. 2

### WARNING

“Sec. 512 (a) National Housing Act, as amended. —Whoever, for the purpose of obtaining any loan or advance of credit . . . with the intent that such loan or advance of credit shall be offered to or accepted by the Federal Housing Administration for insurance . . . makes, passes, utters or publishes, or causes to be made, passed, uttered, or published any statement, knowing the same to be false, or alters, forges, or counterfeits, or causes or procures to be altered, forged, or counterfeited, any instrument, paper, or document, or utters, publishes, or passes as true, or causes to be uttered, published, or passed as true, any instrument, paper, or document, knowing it to have been altered, forged, or counterfeited, or willfully overvalues any security, asset, or income, shall be punished by a fine of not more than \$3,000 or by imprisonment for not more than two years, or both.”

[Endorsed]: Filed Sept. 29, 1942.

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Mr. Westenrider demanded the sum of \$167.00, and I told him I didn't have that much money in

(Testimony of Elizabeth E. Lund.)

the bank at that time, and the only way I could do would be to give him a check dated June 17th when I would have the money which I did. Then I asked him what his name was and he told me John Levi. At that time I believed Mr. Westenrider to be a government investigator. I started to write the check out to him and Westenrider said make this check to Mr. Noble, it will look a little better, it will look as though he done some contract work for you. I made the check out to Mr. Noble (A check on the First National Bank of Reno drawn to the order of E. G. Noble in the sum of \$167.00 and signed by Elizabeth E. Lund was shown to the witness) Answer, Yes, that is the check I gave to Mr. Westenrider.

(Check offered in evidence and admitted without objection as plaintiff's Exhibit No. 3.)

PLAINTIFF'S EXHIBIT No. 3

94-2 First and Virginia Branch 94-2 No. 349

First National Bank of Nevada

Reno, Nevada, June 17, 1942

Pay to the Order of E. G. Noble.....\$167.00

One Hundred Sixty Seven and no/100 Dollars

ELIZABETH LUND

902 S Va St.

(Testimony of Elizabeth E. Lund.)

(Signatures on Back)

E. L. NOBLE

LINCOLN MARKET

302 East 4th St.

Reno, Nevada.

F M B

Any Prior Endorsements Guaranteed

Jun 15 '42 0004

First National Bank of Nevada

First & Virginia Branch

Reno, Nevada 94-2

[Endorsed]: Filed Sept. 29, 1942.

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I think I gave the check to Mr. Noble and he handed it to Mr. Westenrider. Mr. Noble then said to Mr. Westenrider, I suppose this will set me free now. Mr. Westenrider said no, there are two more just such cases to straighten out. They walked away and that's the last I seen of them for a few more days. Mr. E. P. Hesse represents the Nevada Roofing Company. Mr. Noble was associated with him in October, 1941, when Mr. Hesse took the contract to do the remodeling work on my property.

#### Cross Examination

I have known Mr. Noble and Mr. Hesse for some time. They assisted me in getting the government loan for the remodeling work on my property in Carson City. Were you in arrears on that contract

(Testimony of Elizabeth E. Lund.)

to the F. H. A.? You mean that I owed some money? Yes. [44] I don't know what you mean by arrears, Mr. Noble and Mr. Westenrider read the contract (plaintiff's Exhibit No. 1) to me and said that I owed \$250.00, but that wasn't the amount, they had the amount of \$167.00 on this paper. Mr. Westenrider told me he was a government agent or employee. I believed him. I gave him a check for \$167.00, because they insisted on me giving that to them. I didn't owe it to them. I did not think I owed it to the government, I gave it because he was threatening to bring it into Court. He insisted on having it, on me giving it to them. I pay the government \$33.00 every month. I didn't say I owed \$167.00, this man said I owed it. I owed the government the whole contract which was for \$1033.00. Mr. Hesse and Mr. Noble allowed me this contract work which he said the union wouldn't allow them to do so they returned the \$167.00, to do this extra work. I was not in arrears \$167.00, when I gave Noble the check. They said that I was in bad with the F. H. A., that I had received some money there that should have gone in on the contract and if I didn't pay them this \$167.00, they would report it. I paid it because they said I should do so. Later, I found out from Mr. Hesse that they weren't government men. I stopped payment on the check. I'm paying off every month the \$33.00 written in the contract on the F. H. A. loan. Part of the money from the F. H. A. loan did not go into the building, only Mr.

(Testimony of Elizabeth E. Lund.)

Hesse told me to have it done, screens for the windows were purchased with part of the money returned to me. I didn't pay this \$167.00 to prevent them from reporting it back, they just told me I had to do it. They didn't say they had to report it. He said he was a government investigator. No, I wasn't trying to bribe them, or the investigator, I thought it was right for me to pay it back if he said I had done the wrong thing. [45]

Since I gave the check to Noble I have discussed the matter with the F. B. I. man but he didn't authorize me to pay it back, he didn't authorize me to do anything about it. The contract Mr. Hesse made up he said was all right. Mr. Hesse said they couldn't do this work and returned this money for me to do the work. I was not told I would receive immunity if I paid the \$167.00. It wasn't suggested to me. Mr. Noble and I did not conspire to bribe this defendant. I gave that \$167.00 to Mr. Noble. I did not frame up for Mr. Noble to give him \$167.00, to square myself with this government officer. Everything about the loan was already down in black and white at the bank. I gave the \$167.00, because he asked me to, he said he wanted it. He did defraud me because he didn't want it for the government at all, he wanted it for himself. I didn't think I owed the government at all because the full amount was put on the contract. He said I had to pay it, he insisted on it.

When Mr. Noble and I went upstairs he said he

(Testimony of Elizabeth E. Lund.)

was sorry he got me into trouble. He said he tried to straighten this thing up, but he couldn't raise the money. Mr. Hesse wrote the contract. I think Mr. Noble knew all about it. Mr. Noble thought this was a mistake. I later talked with Mr. Hesse and he said it wasn't a mistake, they were union men and couldn't do this work so they got extra money for me to do it. Mr. Noble didn't get any money. Mr. Hesse returned this money for me to do the painting. When Mr. Noble and I talked together up in the room I don't know what Mr. Noble had reference to about getting into trouble, there was nothing said up in the room other than I have told you. I then went down stairs and gave him the check. Mr. Westenrider was the one that wanted the check. I made the check to Mr. Noble because [46] this man said to make it out. Mr. Westenrider said to make it out to Mr. Noble, he said it would look as though he done some contract work for me, and it would look a little better. I didn't give it to Mr. Westenrider so he wouldn't report me to the F. H. A. I gave it because he said I owed it to the government and because he told me to. He didn't tell me he would have me prosecuted if I didn't. Well, I shouldn't have paid anybody only he told me I had to; that was the law. He just told me to, he did not threaten me. I didn't think he would injure me, I was just doing what he told me. He told me to give it to him.

(Testimony of Elizabeth E. Lund.)

Redirect Examination

When I talked with Mr. Westenrider that day he showed me this agreement, he read that warning to me. He said I was stealing from the government. I paid that \$167.00 to Mr. Westenrider because he said it was stealing from the government. I supposed he was a government agent, but I didn't know. He said he was a government investigator, that he investigated loans when the public had been overcharged for the work they had done.

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DAVID W. ELKINS,

a witness in behalf of the plaintiff being first duly sworn, testified in substance as follows:

Direct Examination

My name is David W. Elkins. I reside in Virginia City, Storey County, Nevada. I am Sheriff of Storey County. I've held that position four and a half years. I know John William Westenrider. He is in the Court Room. I first met him in January, 1941, in the office at Virginia City. I saw him from January, 1941, to June, 1942, at least once or twice a week. Question: What was he doing there, if you know? [47]

Mr. Hacker: Just a moment. I object to that line of questioning, upon the ground that it is incompetent, irrelevant, and immaterial, has no connection whatever with the issues in this case, doesn't

(Testimony of David W. Elkins.)

prove or tend to prove any issue in this case. The issue here is that this defendant represented himself to be a government officer in June, 1942. Now what he was doing in Virginia City for a year prior to that, I fail to see where it is relevant in any respect whatever.

Mr. Thompson: I suggest, your Honor——

Mr. Hacker: Now, in that connection, if I may call the Court's attention to this fact, I don't know what the purpose of this examination is, whether to show he is a man of good character or a man of bad character, but if that is his purpose, it is wholly irrelevant because his character is not in issue until he puts it in issue. The government will not be permitted to go into this man's prior life other than to ask if he has ever been convicted of a felony, and I would at least ask that the United States Attorney be required to state the object of this examination, his purpose.

Mr. Thompson: Well, if the Court please, I suggest that the evidence is very material on the question of whether or not this defendant, when he represented himself to be a government officer, was making a false representation, whether that was an assumed character and what he was doing just immediately prior to June 14, 1942, is very relevant on that issue.

The Court: I will permit the question, subject to conditions later. If it isn't connected, it may be stricken.

(Testimony of David W. Elkins.)

Mr. Hacker: I would like to make the further objection, if the Court please, upon the ground it is not the best evidence. [48] If he wants to prove he is not a government officer, the records of the government will prove that.

The Court: That objection will be overruled for the present.

Mr. Hacker: I desire an exception on the grounds stated in the objection.

The Court: Exception may be noted.

Question: Will you state what John William Westenrider was doing in Virginia City prior to June 14, 1942?

Answer: I think in the summer of 1931, he was supposed to have an antique shop, the "Territorial Enterprize," that was the summer of 1941. I don't imagine he ever done any business in there, I don't remember him doing anything. Prior to June 14, 1942, he had no job in Virginia City that I know of, I saw him in Virginia City prior to June 14, 1942, very frequently.

#### Cross Examination

He had been employed at the mines at Virginia City for a couple of months. He is working at the New York mine. He has been employed there for the past two months. I have known him in Virginia City since January, 1941. He never represented to me that he was an officer of the United States Government. I never heard of him representing himself as an officer or an employee of the government.

F. M. BUCHANAN,

a witness on behalf of the plaintiff, being first duly sworn, testified in substance as follows:

Direct Examination

My name is F. M. Buchanan. I reside in Reno. I am in the grocery business. I was living there on June 14, 1942. My [49] business is known as the Lincoln Market. I know E. L. Noble, have known him for about three years. (Exhibit No. 3, a check, was shown the witness.) I have seen that before on Sunday noon, the 14th. I guess it was on a Sunday. Edgar L. Noble brought some fellow with him to my house. He had called me on the phone before he came. He told me he had some money and he wanted to pay me some and I better get it while he had it. He insisted I take care of it that day, he brought a fellow with him. I don't think I would recognize the man again. I cashed the check (Exhibit 3) for Mr. Noble. The way I cashed it was Noble said he wanted the man with him to have \$70.00, so I gave him, the man who was with him, \$70.00, in currency, and Noble wanted to apply \$50.00 on what he owed me. I held out \$15.00, Noble owed Pay-Less and gave him \$14.00, in cash. That left \$18.00, and I told him to stop by the store the following day and get it. I gave the man who was with him \$70.00.

## EDGAR L. NOBLE,

a witness on behalf of the plaintiff, being first duly sworn, testified in substance as follows:

## Direct Examination

My name is Edgar L. Noble, I am one of the defendants in this action. I have pleaded guilty to the second count of the indictment. I am fifty-two years old. My business is construction. I was engaged in that business during the year of 1941. I was associated with Mr. E. P. Hesse. I did some work for Mrs. Elizabeth Lund in 1941 in Reno, also in Carson City at No. 204 S. Division Street. I was working for Mr. Hesse. (Exhibit No. 1 was shown the witness.) Exhibit No. 1, just shown me is the customary installation for Mrs. Lund, it is the copy of [50] the contract with Mrs. Lund and Mr. Hesse. It was the contract for the remodeling of her house at 204 S. Division Street. I know John William Westenrider. I see him in the Court Room, the gentlemen sitting over there (indicating defendant Westenrider). I saw him two or three times prior to the time I met him this spring. I met him the 10th of June, 1942, at Reno. We had a short conversation in regard to some work at Virginia City. He had never been associated with me in any work. If we got these jobs at Virginia City we were talking about we were going to do the work, it was roofing jobs, two roof jobs. I saw him again on Thursday, June 11th, I saw him again on Friday, June 12th of this year in Reno.

(Testimony of Edgar L. Noble.)

We went to Virginia City in Mr. Westenrider's car. We were going to see about this work down there. We had a talk on Saturday about an F. H. A. job. On Friday he went to see the priest for me and came back and we were together most of the time, we started down to Carson City to get some tools and some money I had coming. We had a conversation regarding F. H. A. jobs and how to handle them, on Saturday in Virginia City. The conversation was to the effect that we could get up to \$500.00 for remodeling a home. We couldn't get any more money than went into the jobs. We couldn't try to get more for the prospect. We could get up to \$500.00 for eighteen months, but couldn't get any more money than the job was. I mentioned Mrs. Lund, I told him I got the job for her and I got more money for the job. I said I got the job for Mrs. Lund and I got her more money than the job came to and we weren't allowed to do that. I told this to Westenrider. We then started to Gardnerville to get my tools and some money coming to me. We then went back to Reno, this was on a Saturday and I went to pick up some nails and tools but somebody had got them. [51] Mr. Westenrider and I then went to Virginia City that evening. I ran out of money and I said lets go down to Carson City and get some money from Pardini. We drove from Virginia City to Carson City around nine or ten o'clock at night, Saturday the 13th of June. On

(Testimony of Edgar L. Noble.)

the way down we had a conversation about this Lund deal. Mr. Westenrider said we would go down there and make her give this money back. I said okay. I said how are you going to handle it? He said he would be a special investigator. I said he would get into trouble, but he said he could handle it. I agreed to do it with him. After we got to Carson City we couldn't get a room at Pardini's so we went to Mrs. Lund's and he went inside and said there was no room. She asked if I was in trouble and I said yes. Mrs. Lund and Mr. Westenrider then went behind the car and talked. They were talking quite a while. After Mr. Westenrider came back from talking to Mrs. Lund we went up town and got a room. Westenrider said he would see Mrs. Lund tomorrow. We went back the next morning around ten o'clock. Westenrider and I saw Mrs. Lund at her place at 409 N. Division Street in Carson City. Mr. Westenrider talked with her and Mrs. Lund and I went upstairs and talked. I did not hear what Westenrider said to her. She asked me what I was going to do and I said I didn't know. I didn't have any money. It looked like plenty of trouble, that I didn't have anything to sell. I sat down on the chesterfield in the corner of the room. Then Mr. Westenrider came in and talked to Mrs. Lund. I did not hear what he said. (Plaintiff's Exhibit No. 2 was shown the witness.) He said I don't know whether I ever saw that before or not, but they are all like it. I saw one like it on June

(Testimony of Edgar L. Noble.)

14th when Westenrider and I were with Mrs. Lund. Mr. Westenrider had it in my portfolio. Mr. Westenrider took it out when he was talking [52] with Mrs. Lund. I saw him do that. Mr. Westenrider also had Exhibit No. 1. It was in the portfolio. After Mr. Westenrider talked to Mrs. Lund she made out a check for \$167.00. I had no conversation with her about it. She made the check to me. Exhibit No. 3 is the check Mrs. Lund made out at that time. After that we went to Reno. Mr. Westenrider told me he had the check made out to me because I knew where I could get it cashed. We went to Reno and I called up Mr. Buchanan at his home and asked him if he could cash the check. He said to come out and he would see what he could do. We took the check out to Mr. Buchanan, he cashed the check but didn't have enough to cash it all. He gave Mr. Westenrider \$70.00 and I got \$14.00. I got \$14.00, out of the check. Westenrider got \$70.00.

#### Cross Examination

The check I cashed at Buchanans, I told him to give Westenrider \$70.00, I told him I owed Mr. Westenrider \$70.00. That was what Westenrider was supposed to have out of that check I just told Buchanan I owed Westenrider \$70.00. We drank some of it up, might have gambled a little.

I went up in the room the second day and talked with Mrs. Lund. There was not much to it. I said it looks like I am in a jam because I got her more

(Testimony of Edgar L. Noble.)

money on that loan than the government would allow her. I got her \$167.00, she knew that the reason she gave the check was to square this amount. I don't know if she knew she owed that to the government or not. I told her she should pay it back to the government. She gave it for that purpose. I had assisted her in obtaining the loan. I wrote out the application for her. I called her attention to it and told her I didn't have any money or means of clearing it up. She didn't have to do [53] it, she did it because I called her attention to it. Mr. Westenrider and I had an understanding prior to the time we got the money. He said that he would represent himself to be a special investigator. We went to Gardnerville to see about getting some money. I had been drinking, some people might call it excessively. When I pleaded guilty I did not ask for immunity, like everybody else I hoped for the best. I have not yet been sentenced. I pleaded guilty three and a half months ago before the commissioner.

#### Redirect Examination

I am not asking Mr. Westenrider is to blame any more than I am in getting this money because I knew better than to go into a deal of that kind. I do not know what Mrs. Lund did with the \$167.00.

#### Recross Examination

I never represented to Mrs. Lund that there was \$167.00, due the government or anything was due the government. I just told her she had \$167.00,

(Testimony of Edgar L. Noble.)

she wasn't allowed to get. Mrs. Lund and I did not have any understanding about the \$167.00, I just said to her that I couldn't raise the money to pay this \$167.00, back to the F. H. A. Out of the \$167.00, I paid \$50.00, on the grocery bill, and Mr. Westenrider got \$70.00. We didn't give any to the government. We spent it for our own use.

By Mr. Thompson: If the Court please, I offer in evidence certificate of R. Winton Elliott, Assistant to the Commissioner of the Federal Housing Administration to the effect that John William Westenrider has never been an employee of the Federal Housing Administration.

Mr. Hacker: No objection. As a matter of fact, we will stipulate that he has never been in any wise connected with the [54] F. H. A.

PLAINTIFF'S EXHIBIT No. 4

Federal Housing Administration  
Washington, D. C.

September 24, 1942.

R. Winton Elliot

Assistant to the Commissioner

To Whom It May Concern:

The undersigned, Assistant to the Commissioner of the Federal Housing Administration, in charge of personnel, does hereby certify that the records of the Federal Housing Administration have been examined and up to the date of this affidavit, according to the search of such records, no person

(Testimony of Edgar L. Noble.)

has been employed by the Federal Housing Administration either on an annual basis or as a fee employee, or as a per diem employee under the name of John William Westenrider. The undersigned further certifies that no application for employment with the Federal Housing Administration in the name of John William Westenrider is now on file in the Washington office of the Federal Housing Administration.

R. WINTON ELLIOTT,

Assistant to the Commissioner.

I, Lorraine F. Argent, Notary Public in and for the District of Columbia, do hereby certify that the above affidavit was signed in my presence by R. Winton Elliott, Assistant to the Commissioner, in charge of Personnel, Federal Housing Administration, and that such signature is the signature of R. Winton Elliott, Assistant to the Commissioner, in charge of Personnel, Federal Housing Administration.

Subscribed and sworn before me, this twenty-fourth day of September, nineteen hundred and forty-two.

[Seal]

LORRAINE F. ARGENT.

[Endorsed]: Filed Sept. 29, 1942.

## MRS. LUND,

recalled, testified in substance as follows:

## Direct Examination

I painted the outside of the house and some of the inside and done some framing, different things with the \$167.00, that Mr. Hesse gave me out of the money borrowed on the F. H. A. loan. I spent \$189.00, on the property that I have the record of. Mr. Hesse bought screens which made a total above \$833.00, of \$1033.00, the loan. The money was spent on the improvement of my property at 204 S. Division Street, Carson City.

## Cross Examination

The amount was \$167.00, Mr. Hesse didn't use that at all, Mr. Hesse told me he never used this contract at all, this one you have here. I did not give the \$167.00, to Mr. Noble for his own use. Mr. Westenrider told me to make it out to him. (A check for \$167.00, was shown the witness.) They claim there was that much over the contract. He was supposed to be a government agent and I just supposed they wanted me to pay this back that Mr. Hesse returned to me. That wasn't the correct amount. I don't know the correct amount off hand. I did not give it to Mr. Westenrider to use for his own benefit. They said I got more money than the amount I should have got from the government the amount of \$167.00, and they were supposed to return it to the Federal Housing Administration.

At this point the plaintiff rested its case. A mo-

tion for a directed verdict was made at the close of the government's case. The jury was excused, and the Court denied the motion for a directed verdict. [55]

The testimony on the part of the defendant was by the defendant himself and consisted of a denial of all the testimony of Mr. Noble and of receiving any of the money out of the check but he did admit that he was at Mrs. Lund's home with Mr. Noble on Saturday night at two o'clock and on Sunday forenoon about twelve o'clock on June 14, 1942. The defendant testified that when he and Noble reached Mrs. Lund's house about noon on Sunday, June 14, 1942, Mrs. Lund immediately began to berate Noble for not paying her some rent and also for not putting some sills under her house, which he was supposed to do under his contract with her; that Noble and Mrs. Lund then went upstairs and shortly thereafter Noble came back down with Mrs. Lund's check to his order for \$167.00. [56]

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[Title of District Court and Cause.]

STIPULATION AS TO BILL OF  
EXCEPTIONS

It Is Hereby Stipulated and Agreed by and between the attorneys for the respective parties hereto, that the foregoing Bill of Exceptions is correct in substance, that with the exhibits, all of which are

to be submitted to the Circuit Court of Appeals on the argument by appropriate stipulation and order, it contains all the evidence in this cause, and that it may be duly signed, settled and allowed by the Honorable Frank H. Norcross, United States District Judge, who presided at the trial of this cause.

Dated: December 4, 1942.

BRUCE R. THOMPSON,

Ass't. United States Attorney.

WM. L. HACKER,

Attorney for Defendant-Appellant. [57]

#### ORDER

This is to certify that the foregoing Bill of Exceptions rendered by the Defendant-Appellant is correct in substance, that with the exhibits, all of which are to be submitted to the Circuit Court of Appeals on the argument by appropriate stipulation and order, it contains all the evidence in this cause, and the said exhibits are hereby made part of this Bill of Exceptions, and it is hereby settled, allowed, and made a part of the record in this cause.

FRANK H. NORCROSS,

United States District Judge.

Dated: December 4th, 1942. [58]

[Endorsed]: Filed Dec. 4th, 1942.

[Title of District Court and Cause.]

ORDER RE TRANSCRIPT OF RECORD

On the consent of the attorneys for the respective parties, it is hereby Ordered that the Clerk of this Court prepare and certify a Transcript of the Record in the above entitled case for the use of the Ninth Circuit Court of Appeals of the United States by including therein the following:

1. Indictment
2. Notice of Appeal
3. Assignment of Errors
4. Bill of Exceptions
5. Motion for Directed Verdict
6. Originals of Plaintiff's Exhibits 1, 2, 3, and 4.
7. The Verdict of the Jury
8. The Judgment of the Court

Dated this 4th day of December, 1942.

FRANK H. NORCROSS,  
District Judge.

[Endorsed]: Filed Dec. 4, 1942. [59]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK,  
U. S. DISTRICT COURT

United States of America,  
District of Nevada—ss.

I, O. E. Benham, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the case of United States of America, Plaintiff, vs. Edgar L. Noble and John William Westenrider, alias John Levi, true name John William Westenrider, Defendants, said case being No. 10,556 on the criminal docket of said Court.

I further certify that the attached transcript, consisting of 61 typewritten pages numbered from 1 to 61, inclusive, contains a full, true and correct transcript of the proceedings in said case and of all papers filed therein, together with the endorsements of filing thereon, as set forth in the Order of Court, dated December 4, 1942, and filed and entered in said case and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk in Carson City, State and District aforesaid. [60]

I further certify that pursuant to Order of

Court, filed and entered December 4, 1942 herein there is accompanying this Transcript of Record on Appeal the following original exhibits, to-wit:

Plaintiff's Exhibits:

No. 1, Copy of "Contract and/or Order" signed by Elizabeth E. Lund;

No. 2, Printed form "F. H. A. Title I Loan, Credit Statement—Application" with printed warning at the bottom of the back side thereof;

No. 3, Check No. 349, dated June 17, 1942, signed by Elizabeth Lund, payable to E. L. Noble, in the amount of \$167.00;

No. 4, Certificate of R. Winton Elliott, Assistant to the Commissioner, Federal Housing Administration, dated September 24, 1942.

And I further certify that the cost of preparing and certifying to said record, amounting to \$15.00, has been paid to me by Wm. L. Hacker, Esq., one of the attorneys for the appellant herein.

Witness my hand and the seal of said United States District Court this 9th day of December, 1942.

[Seal]

O. E. BENHAM

Clerk, U. S. District Court.

[61]

[Endorsed]: No. 10290. United States Circuit Court of Appeals for the Ninth Circuit. John William Westenrider, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Nevada.

Filed December 11, 1942.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.